

The ALJ awarded benefits for .43 weeks of temporary total disability benefits and permanent disability benefits based on a stipulated 7.5 percent general disability. The ALJ also assessed interest for failure to pay benefits from the date of the stipulation to the 7.5 percent disability. On appeal, respondent contends the Award should, pursuant to K.S.A. 44-501, be limited to payment of medical benefits because claimant was not disabled for one week from earning full wages. Respondent also disputes the ALJ's award of interest.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board affirms the award for 7.5 percent permanent partial disability and .43 weeks of temporary total disability benefits. The Board affirms the award of interest but will change the beginning date for that interest.

Findings of Fact

1. On February 21, 1996, claimant, who worked for respondent as an LPN, reported problems with her back from lifting at work. The problems had developed over time but at this point became severe and claimant was sent home.

2. The Board finds, based on claimant's testimony, that claimant was disabled from earning full wages for more than one week. Claimant was off work from February 21, 1996, to March 4, 1996. She was released by her treating physician to return without restrictions March 1, 1996. Claimant was then off work for approximately two weeks beginning in the middle of March for an unrelated medical condition. Claimant again returned to work for respondent but resigned as of April 14, 1996, because she could not lift the patients. Claimant has since gone to work for another employer.

Respondent argues that claimant was off only three days because of her work injury and then was off for the remainder of the time for separate neck problems. This argument rests on a letter from Dr. Daniel J. Koehn that says claimant called after the initial three days and made complaints of neck problems. He then indicated he was aware she was off ten days without saying specifically that he authorized the ten days and without saying whether the neck problems were work related. The letter is ambiguous, and Dr. Koehn did not testify. Claimant testified, and the Board finds, claimant was off work for more than one week because of her work-related back injury.

The Board also finds, based on claimant's uncontroverted testimony, that claimant left employment for respondent April 14, 1996, because of her back injury and resulting inability to perform the duties lifting patients.

Conclusions of Law

1. The Board concludes the award for 7.5 percent permanent partial disability and .43 weeks of temporary total disability should be affirmed.

2. The Board first notes that the Award states the parties have stipulated that claimant met with accidental injury arising out of and in the course of employment with respondent through a series of repetitive traumas from February 21, 1996, through April 14, 1996. This would suggest a date of accident of April 14, 1996. *Treaster v. Dillon Companies, Inc.*, 267

Kan. 610, 987 P.2d 325 (1999). Respondent has argued the award should be limited to medical expenses because she was not disabled for one week from earning full wages. This argument relies on a version of K.S.A. 44-501 that was amended as of April 4, 1996. For accidents after April 4, 1996, the statute no longer requires that the claimant be disabled for one week before permanent disability benefits can be awarded. Neither party addressed this issue in their briefs on appeal. The transcript of the regular hearing shows claimant alleged accidental injury through April 14, 1996, and then states that respondent has stipulated to all the elements of compensability. Respondent's submission letter states, as the Award reflects, respondent stipulates that claimant met with personal injury by a "series of accidents occurring on February 21, 1996 through April 14, 1996."

The Board concludes on the record before it that the date of accident was April 14, 1996. Claimant's testimony reflects a back injury from repetitive lifting and reflects claimant left employment with respondent on April 14, 1996, because of that injury.

For accidental injury on April 14, 1996, a claimant who sustained permanent disability would be entitled to permanent disability benefits even if he/she were not disabled from earning full wages for one week. K.S.A. 1999 Supp. 44-501.

3. The Board further concludes that claimant would be entitled to permanent disability benefits under the version of K.S.A. 44-501(c) applicable before its amendment as of April 4, 1996. At that time the statute read:

Except for liability for medical compensation . . . the employer shall not be liable under the workers compensation act in respect of any injury which does not disable the employee for a period of at least one week from earning full wages at the work at which the employee is employed.

Claimant was disabled from earning full wages for ten days after February 21, 1996. She was also disabled from earning wages "at the work at which the employee is employed" when she was forced to leave employment with respondent. Either circumstance would qualify claimant for permanent disability benefits.

4. The Board concludes the award of interest should be affirmed but would change the beginning date to the date of respondent's submission letter. The evidence on whether claimant was disabled for a week was, in our view, conflicting. But for an accident on April 14, 1996, this was not a relevant defense. If there was an issue about the date of accident, that issue no longer existed from the date of respondent's submission letter when respondent stated a stipulation to accident continuing through April 14, 1996. We note respondent has argued in its submission letter that the amendment to K.S.A. 44-501 applies only to accidents after the date of the amendment. We can only assume respondent thought the amendment became effective July 1, 1996, as would often be the case. But this particular amendment became effective April 4, 1996, before the date of accident. Respondent is ordered to pay interest in accordance with K.S.A. 44-512a from

October 25, 1999, the date of respondent's submission letter. There was not just cause or excuse not to pay the stipulated 7.5 percent disability at least from that date forward.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Steven J. Howard on November 23, 1999, should be, and is hereby, affirmed.

The award for 7.5 percent permanent partial disability and .43 weeks of temporary total disability should be affirmed. The award of interest is affirmed to begin as of October 25, 1999.

IT IS SO ORDERED.

Dated this ____ day of May 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Patrick C. Smith, Pittsburg, KS
John I. O'Connor, Pittsburg, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director